

BOIES, SCHILLER & FLEXNER LLP
 RICHARD J. POCKER (NV Bar No. 3568)
 300 South Fourth Street, Suite 800
 Las Vegas, NV 89101
 TELEPHONE: (702) 382-7300
 FACSIMILE: (702) 382-2755
 rpocker@bsfllp.com

BOIES, SCHILLER & FLEXNER LLP
 STEVEN C. HOLTZMAN (*pro hac vice*)
 KIERAN P. RINGGENBERG (*pro hac vice*)
 1999 Harrison Street, Suite 900
 Oakland, CA 94612
 TELEPHONE: (510) 874-1000
 FACSIMILE: (510) 874-1460
 sholtzman@bsfllp.com
 fnorton@bsfllp.com
 kringgenberg@bsfllp.com

BINGHAM MCCUTCHEN LLP
 GEOFFREY M. HOWARD (*pro hac vice*)
 THOMAS S. HIXSON (*pro hac vice*)
 KRISTEN A. PALUMBO (*pro hac vice*)
 THREE EMBARCADERO CENTER
 SAN FRANCISCO, CA 94111-4067
 Telephone: 415.393.2000
 Facsimile: 415.393.2286
 geoff.howard@bingham.com
 bree.hann@bingham.com
 thomas.hixson@bingham.com
 kristen.palumbo@bingham.com

DORIAN DALEY (*pro hac vice*)
 DEBORAH K. MILLER (*pro hac vice*)
 JAMES C. MAROULIS (*pro hac vice*)
 ORACLE CORPORATION
 500 Oracle Parkway
 M/S 5op7
 Redwood City, CA 94070
 Telephone: 650.506.4846
 Facsimile: 650.506.7114
 dorian.daley@oracle.com
 deborah.miller@oracle.com
 jim.maroulis@oracle.com

Attorneys for Plaintiffs
 Oracle USA, Inc., Oracle America, Inc., and
 Oracle International Corp.

SHOOK, HARDY & BACON LLP
 B. Trent Webb (*pro hac vice*)
 2555 Grand Boulevard
 Kansas City, Missouri 64108-2613
 Telephone: (816) 474-6550
 Facsimile: (816) 421-5547
 bwebb@shb.com

Robert H. Reckers (*pro hac vice*)
 600 Travis Street, Suite 3400
 Houston, Texas 77002
 Telephone: (713) 227-8008
 Facsimile: (713) 227-9508
 rreckers@shb.com

LEWIS ROCA ROTHGERBER LLP
 W. West Allen (Nevada Bar No. 5566)
 3993 Howard Hughes Parkway, Suite 600
 Las Vegas, Nevada 89169
 Tel: (702) 949-8200
 Fax: (702) 949-8398
 Wallen@lrrlaw.com

GREENBERG TRAURIG
 Mark G. Tratos (Nevada Bar No. 1086)
 Brandon Roos (Nevada Bar No. 7888)
 Leslie Godfrey (Nevada Bar No. 10229)
 3773 Howard Hughes Parkway
 Suite 400 North
 Las Vegas, NV 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002
 tratosm@gtlaw.com
 roosb@gtlaw.com
 godfrey1@gtlaw.com

Attorneys for Defendants Rimini Street,
 Inc., and Seth Ravin

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;
 ORACLE AMERICA, INC., A Delaware
 corporation; and ORACLE INTERNATIONAL
 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
 AND SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-PAL

JOINT PRETRIAL ORDER

I. NATURE OF THE ACTION AND THE CONTENTIONS OF THE PARTIES

A. Oracle's Contentions

This case is about how Seth Ravin and Rimini Street Inc. built a business on the back of their massive theft of Oracle's copyrighted software and support materials, and the resulting harm to Oracle. Oracle will prove that Rimini's business model was based on the pervasive, undisputed, and unauthorized downloading and other copying of millions of files of Oracle's PeopleSoft, J.D. Edwards, Siebel, and Database software and support materials. Rimini provided cut-rate support at 50% of Oracle's cost by using hundreds of unlicensed copies of Oracle's software in the form of local software "environments" on Rimini's systems and by engaging in "cross-use," i.e., the use of one customer's licensed software to support other customers.

Rimini's copyright infringement can no longer be disputed. The Court's summary judgment rulings established that Rimini infringed Oracle's copyrights based on Rimini's copying and use of Oracle's Database software and Oracle's PeopleSoft software for certain customers, and Rimini has indicated it will finally concede it has no defense to Oracle's claim that Rimini's entire PeopleSoft development process was infringing.¹

¹ Nonetheless, Rimini refuses to stipulate to liability for the additional PeopleSoft copyright registrations it has infringed. As described below in Oracle's proposed length of trial, Rimini's

(Footnote Continued on Next Page.)

1 [REDACTED], and those customers were the most important and
2 valuable customers for Rimini's business. The Court also ruled that Rimini infringed Oracle's
3 J.D. Edwards and Siebel copyrights, but left open the question of whether Rimini's use of this
4 software was limited to archival and backup copies, the only use permitted under Rimini's
5 license defense.

6 As part of its efforts to lure customers away from Oracle, Rimini also concealed and
7 made false statements regarding its improper and unauthorized conduct. For example, Rimini
8 repeatedly told customers that it did not cross-use any software. Rimini also made similar
9 statements to this Court, claiming that Oracle's software and support materials were stored in
10 client-specific "data silos," and that a co-mingled software library "never existed" at Rimini.
11 The Court found these statements were false. The Court also sanctioned Rimini for deleting a
12 co-mingled library of Oracle's software in anticipation of that library being discovered in
13 litigation.

14 Rimini has no defense for its infringement of Oracle's PeopleSoft and Database software,
15 and only Oracle's damages need to be decided. Rimini's conduct also makes it liable for twelve
16 additional claims: (1) violation of the Federal Computer Fraud and Abuse Act, 18 U.S.C.
17 §§ 1030(a)(2)(C), (a)(4), & (a)(5) (the "CFAA"); (2) violation of the California Computer Data
18 Access and Fraud Act, Cal. Penal Code § 502; (3) violation of Nevada Revised Statutes
19 § 205.4765; (4) breach of contract; (5) inducement of breach of contract; (6) intentional
20 interference with prospective economic advantage; (7) negligent interference with prospective
21 economic advantage; (8) unfair competition; (9) trespass to chattels; (10) unjust enrichment; (11)
22 unfair practices; and (12) an accounting. Rimini's wrongful conduct also entitles Oracle to
23 punitive damages. As the founder and CEO of Rimini, and as the person who designed and had
24 policy and operational control over the company, Seth Ravin is also personally liable for these
25 claims. This is not new for him. Prior to founding Rimini, Ravin was the President of

26 _____
(Footnote Continued from Previous Page.)

27 refusal to stipulate that the conduct determined by the Court on summary judgment to constitute
28 copyright infringement will needlessly complicate and lengthen trial.

1 TomorrowNow, a company who committed criminal copyright infringement and violated the
2 CFAA by unlawfully downloading materials and making and using thousands of copies of
3 Oracle's copyrighted software pursuant to a support model Ravin claimed to have created and
4 then mimicked at Rimini.

5 From day one, Ravin and Rimini's scheme has been to build a business through
6 indiscriminate infringement and unauthorized downloads, hide what it has been doing, and avoid
7 paying for the full extent of the harm it caused Oracle if it was ever caught. But the damage to
8 Oracle has been extensive and is undeniable. For the 364 customers Rimini took from Oracle
9 through December 2011, Oracle has suffered \$193.4 million in lost profits through December
10 2012, with additional losses since. Oracle was also deprived of \$17.9 million in licensee fees
11 due to Rimini's extensive infringement of Oracle's Database software. In fact, the fair market
12 value of a license for Rimini's use of Oracle's PeopleSoft, J.D. Edwards, and Siebel would have
13 been a combined \$210.0 million.

14 **B. Rimini's Contentions**

15 While Oracle attempts to paint Rimini as a corrupt and criminal operation, the reality is
16 that Rimini is the leading global provider of independent enterprise software support services
17 with operations in the US, Canada, Brazil, UK, Germany, India, Australia and Japan. In fact,
18 Rimini has more than 400 global employees, has signed support agreements with nearly 900
19 clients— including more than 100 Fortune 500 and Fortune Global 100 largest companies in the
20 world. As these clients understand, Rimini has a right to offer independent support services to
21 Oracle licensees, and Oracle licensees have a legal right to purchase independent support
22 services from Rimini instead of purchasing support services from Oracle. This case is primarily
23 about the specific processes Rimini previously used to support a portion of its Oracle PeopleSoft,
24 JD Edwards and Siebel support clients between 2006 and February of 2014.

25 With respect to the challenged processes, the Court, in its Order of February 13, 2014,
26 analyzed various PeopleSoft, J.D. Edwards, and Seibel license agreements for Rimini's clients
27 and held that the rights granted by Oracle's licensing agreements "are not limited or restricted to
28 any specific physical embodiment of the software, like Oracle's provided software installation

media.” (Doc. No. 474 at 10, 16). Rather, the rights contained in Oracle’s license agreement “apply equally to the copies of the copyrighted software maintained on Rimini’s systems regardless of whether Rimini used the specific installation media provided by Oracle to make those copies.” *Id.* at 10. As a result, the Court held that Rimini may assert its customers’ software license as a defense to Oracle’s claims of copyright infringement in this action” and analyzed various PeopleSoft, J.D. Edwards, and Seibel license agreements for Rimini’s customers. *Id.* at 10 and 16.

Though the Court denied Oracle’s motion for summary judgment as to Rimini’s J.D. Edwards, and Seibel clients, Court found that certain practices by Rimini were not authorized by the PeopleSoft license agreements and, thus, constituted copyright infringement. In light of these findings, the parties are presently conferring regarding a proposed PeopleSoft license stipulation that will address Rimini’s express license defense for its past conduct relating to PeopleSoft software² and installation media.³ From Rimini’s perspective, the proposed PeopleSoft license stipulation will greatly simplify the trial in this matter as to PeopleSoft software.

With respect to the copyright claims not adjudicated on summary judgment, Rimini will present evidence based on Oracle license agreements in support of Rimini’s express license defense to copyright infringement allegations regarding:

- Oracle’s infringement claims based on Rimini’s copying of J.D. Edwards software and documentation;
- Oracle’s infringement claims based on Rimini’s copying of Siebel software and

² Despite Oracle’s success on summary judgment, Oracle now seeks to “pile on” and indicates that it intends to present substantial liability evidence of copyright infringement for claims already addressed by the Court’s summary judgment opinion. If permitted, such a presentation will serve only to “needlessly complicate and lengthen trial.” Further, Rimini submits that the streamlining of the trial can only be accomplished if Oracle elects to reasonably pare down its dozen overlapping causes of action.

³ Notwithstanding the forgoing, Rimini reserves the right to refer to the *PeopleSoft* license agreements in the defense of Oracle’s damages claims. Further, Rimini reserves the right to introduce evidence based on Oracle license agreements to the extent evidence introduced by Oracle makes such evidence relevant.

documentation;

- Oracle's infringement claims based on Rimini's copying of documentation for PeopleSoft.

Because the express terms of the underlying licenses authorized copying of Oracle software by Rimini on behalf of its clients, Oracle's infringement claims fail with respect to: J.D. Edwards software and documentation; Siebel software and documentation and PeopleSoft documentation.

With respect to damages, Oracle's claims are unsupported, unduly speculative and excessive in light of the actual evidence. While Oracle's damage demand approaches twice Rimini's total revenue, Rimini certainly did not cause Oracle's dissatisfied customers to leave Oracle support for Rimini support. In fact, Rimini accounts for only a fraction of the Oracle customer defections, and a portion of Oracle's customers leave every year in favor of other support options, such as self-support and other independent support providers. Put simply, there is no causal link between any infringement by Rimini and clients choosing to switch from Oracle support to Rimini support.

Further, there can be no question that the challenged practices provided little, if any value, to Rimini, and the evidence in this case establishes that Rimini could have implemented a non-infringing support models with minimal additional costs. The cost to implement such a non-infringing model is the true "value of use" attributable to the alleged infringement, and, thus, the evidence in this case does not support any damage award in excess of 10 million dollars.

II. THE COURT'S JURISDICTION

This Court has subject matter jurisdiction over Oracle's copyright infringement claim, 17 U.S.C. §§ 101 *et seq.*, and Computer Fraud and Abuse Act claim, 18 U.S.C. §§ 1030 *et seq.* This Court has supplemental subject matter jurisdiction over Oracle's state law claims under 28 U.S.C. § 1367, because these claims are so related to Oracle's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative facts. This Court also has original subject matter jurisdiction over the state law claims under 28 U.S.C. § 1332 because there is a complete diversity of citizenship between Oracle and Rimini, and the

1 amount in controversy exceeds \$75,000.

2
3 **III. UNCONTESTED FACTS AS AGREED TO BY THE PARTIES**

4 The following facts are undisputed, and the Parties will stipulate to them for
5 incorporation into the trial record without the necessity of supporting testimony or exhibits,
6 subject to the Court's rulings, motions in limine, anticipated Daubert motions and other pretrial
7 issues.

8 1. On February 15, 2010, Plaintiff Oracle USA, Inc., a Colorado corporation,
9 merged with and into Sun Microsystems, Inc. Sun Microsystems, Inc., the surviving corporation,
10 was then renamed "Oracle America, Inc." ("Oracle America").

11 2. Plaintiff Oracle America is a Delaware corporation, with its principal place of
12 business in Redwood City, California.

13 3. Oracle America develops and licenses certain intellectual property, including
14 copyrighted enterprise software programs, and provides related services.

15 4. Oracle America is the successor in interest to Oracle USA, and through Oracle
16 USA is the successor to PeopleSoft USA, Inc. and a successor in interest to certain PeopleSoft,
17 JDE, and Siebel entities. Hereinafter, Oracle USA, Inc. and Oracle America, Inc. are referred to
18 collectively as "Oracle America."

19 5. Plaintiff Oracle International Company ("OIC," and together with Oracle
20 America, "Oracle") is a California corporation, with its principal place of business in Redwood
21 City, California. OIC owns and licenses certain intellectual property, including copyrighted
22 enterprise software programs used around the world.

23 6. Intellectual property rights formerly held by certain PeopleSoft, JDE, and Siebel
24 entities were transferred to OIC as part of the acquisitions of PeopleSoft and Siebel by Oracle.

25 7. As is typical in the enterprise software industry, Oracle does not sell ownership
26 rights to this software or the related support products Oracle provides to its paying customers.

27 8. Instead, Oracle's customers purchase licenses that grant them limited rights to use
28 specific Oracle software programs.

9. Separate from the license to the underlying software, Oracle also enters into support contracts with its customers, which entitled them to receive, for an annual maintenance fee, software upgrades and software support, including fixes, patches and updates typically made available for download from Oracle's password-protected websites.

10. Oracle's predecessors also sold both software licenses and support contracts for PeopleSoft, J.D. Edwards, and Siebel enterprise software.

11. Defendant Rimini Street, Inc. is a company that provides similar software support services to licensees of Oracle's PeopleSoft, J.D. Edwards and/or Siebel software.

12. Rimini competes directly with Oracle to provide these services.

13. Rimini launched its operations in September 2005, offering support services for Oracle's Siebel software.

14. Rimini expanded its support offering to Oracle's PeopleSoft products in April 2006 and to Oracle's JD Edwards products in September 2006.

15. Rimini contracted with 364 customers to provide support for PeopleSoft, J.D. Edwards, and/or Siebel enterprise software between 2006 and November 2011.

16. Each of Rimini's PeopleSoft, J.D. Edwards, and/or Siebel customers licensed PeopleSoft, J.D. Edwards and/or Siebel enterprise software from Oracle.

17. Defendants identified 364 customers that received support service from Rimini Street for PeopleSoft, J.D. Edwards and Siebel applications between 2006 and November 2011.

18. The following chart lists all of the customers for whom Defendants contracted with for the support of PeopleSoft, J.D. Edwards, or Siebel software since Defendants' inception through November 2011:

Rimini Customer Name	Product Type	Rimini Start Date
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
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19. Rimini stored 18 copies of Oracle Database installation media on its local systems as detailed on Exhibit B.

20. Each environment on Rimini's local systems constitutes a reproduction of one or more of the copyrighted works listed in Exhibit A.

21. Rimini reproduced copyrighted PeopleSoft works listed in Exhibit C by copying or installing the listed environments on its local systems.

1 22. Rimini reproduced copyrighted Siebel works listed in Exhibit E by copying or
2 installing the listed environments on its local systems.

3 23. Rimini reproduced copyrighted J.D. Edwards works listed in Exhibit D by
4 copying or installing the listed environments on its local systems.

5 24. Each of the 463 PeopleSoft, J.D. Edwards, and Siebel environments listed as
6 items 1-280, 282-285, 287-322, 324-333, 335-336, 338-468 in the second column of Exhibit F
7 embodies a substantial portion of the protected expression of the corresponding registered
8 copyright(s) listed in the fourth column of Exhibit F.

9 25. Rimini has at least 216 environments on its servers that contain installed copies of
10 Oracle Database.

11 26. Rimini reproduced at least 191 copies of copyrighted Oracle Database works to
12 support local environments on its computer systems, as listed in Exhibit G.

13 27. To access certain portions of the Oracle's protected computers, Oracle provided a
14 unique username and password ("login credentials") to licensed customers with active support
15 contracts that were used for certain websites.

16 28. On or before October 26, 2006, Rimini created an automation script that used
17 DownLoadThemAll to download PeopleSoft materials.

18 29. On average, over 95% of Oracle's support customers renew support with Oracle
19 every year.

20 30. Oracle America received the fees that customers paid Oracle for support.

21 31. OIC derives revenue from inter-company sublicense fees received from other
22 Oracle entities in accordance with Oracle inter-company distribution agreements.

23 32. Between 2006 to 2011, Oracle America paid OIC a sublicense fee of 39% on
24 support revenue.

25 33. In June 2006, Oracle implemented a standard 3% annual inflationary support fee
26 increase for its PeopleSoft, J.D. Edwards and Siebel support contracts. Under this policy, Oracle
27 increased its support fees by 3% every year.

28 34. Oracle support annual revenue attrition rates in 2006 to 2011 ranged from 3% to

1 6% for PeopleSoft support, 4% to 9% for J.D. Edwards support, and 4% to 8% for Siebel
2 support.

3 35. Between 2006 to 2011, Oracle America's annual incremental profit margins on
4 software license updates and software support revenue ranged from 91% to 94%.

5 36. Between 2006 to 2011, OIC's annual incremental profit margins on software
6 license updates and software support revenue ranged from 89% to 96%.

7 37. Defendants identified 72 customers and 174 local environments for which Rimini
8 used Oracle Database through November 2011.

9 38. Rimini conducted a pilot launch of its Siebel support in January 2006 and
10 acquired its first Siebel customer in February 2006.

11 39. In January 2006, Oracle acquired Siebel, including the Siebel copyrighted
12 materials in suit, for \$6.1 billion.

13 40. OIC is the owner or exclusive licensee for each of the 100 registered works listed
14 in Exhibit A.

15 41. OIC has a valid copyright registration for each of the 100 registered works listed
16 in Exhibit A.

17 42. Many of Rimini's fixes for PeopleSoft software involved files that contained
18 modified versions of Oracle's source code.

19 20 **IV. DISPUTED FACTS AS AGREED TO BY THE PARTIES**

21 **A. Oracle's Separate Statement**

22 On October 2, 2014, Oracle presented Rimini with 339 facts which Oracle believed to be
23 undisputed and material to its 13 causes of action, including facts relevant to the jury's
24 calculation of damages. Since then, Rimini has agreed that some are undisputed and specifically
25 disputed others. But for 292 of them, Rimini told Oracle that Oracle's facts are either "disputed"
26 or "immaterial" and Rimini has refused to tell Oracle which facts fall into which category.
27 Rimini claims that Oracle has not identified the "the truly material facts supporting its claims,"
28 but Rimini ignores the vast scope of its wrongdoing. Rather, Rimini's complaints reflect its

1 refusal to admit to any of its improper conduct, regardless of whether it will dispute those facts at
 2 trial. For example, Rimini will not say whether it will dispute facts that are at the core of
 3 Rimini's PeopleSoft infringement. *See* Oracle Separate Statement of Fact # 321 ("Of the 321
 4 [local PeopleSoft] environments [that resided on Rimini's local systems], 104 were created by
 5 copying an existing environment ostensibly maintained on behalf of one customer in order to use
 6 the copy to support a different customer.")). The result is that the parties have not meaningfully
 7 narrowed the issues to be decided at trial even after the Court's clear rulings about Rimini's
 8 conduct. Because Rimini will not state whether they specifically "dispute" these facts, even
 9 though many of them come from Rimini's discovery responses, Oracle lists them below in
 10 Oracle's Separate Statement of Issues of Fact and Law below.

11 Rimini has told Oracle that it disputes the following facts proposed by Oracle:

12 1. Defendants downloaded software and documentation from Oracle websites
 13 including Customer Connection, E-Delivery, Siebel SupportWeb, My Oracle Support, and
 14 Oracle Technology Network to Rimini's local computer systems.

15 2. Oracle's computer systems accessed by Defendants to download to their own
 16 computers were protected computers within the meaning of 18 U.S.C. § 1030(e)(2).

17 3. To access and copy content from Oracle's protected computers, Defendants used
 18 commercially available applications Black Widow, Offline Explorer, FlashGot, Wget, and
 19 DownLoadThemAll.

20 4. To access and copy content from Oracle's protected computers, Defendants used
 21 applications that they developed known as Continuing Documentation, Solutions, Updates and
 22 Fixes, Client Cases, Roadmaps and Schedules, Patches and Downloads, and Update Center.

23 5. Since Ravin launched Rimini's support services in 2005, Rimini and Ravin have
 24 marketed Rimini's support services as providing vendor replacement-level support that meets or
 25 exceeds the level of support provided by Oracle, at a significant price discount (50% or more)
 26 from Oracle's price.

27 **B. Rimini's Separate Statement**

28 Rimini fundamentally disagrees with Oracle's attempts to include more than 25 pages of

almost 300 proposed “material facts” in this Order. From Rimini’s perspective, Oracle has not even attempted to identify the truly material facts supporting its claims, instead submitting a laundry list of the evidence Oracle hopes to present at trial. Such a list is not properly included in a pretrial order, and Oracle’s submission fails to provide guidance as to the truly material issues of fact. In contrast, Rimini offers a focused list of material facts that support Rimini’s defenses and damages contentions in this case, as set forth below as Defendants’ Separate Statement of Issues of Fact and Law.

V. CONTESTED ISSUES OF LAW AS AGREED TO BY THE PARTIES

The Parties agree that there will be a number of discrete points of law in dispute at or before trial, including for example legal disputes as to the admissibility of certain evidence. Given the number of customer licenses and website terms of use that are potentially relevant to Oracle’s various claims, the parties are continuing to meet and confer regarding an appropriate mechanism and process by which to efficiently inform the jury of the meaning and application of relevant provisions. The parties hope to use the Court’s prior summary judgment ruling to stipulate to the meaning of relevant license provision. However, in the event there are disputes regarding the meaning of specific provisions, the parties may propose a pre-trial hearing to gain the Court’s ruling on the license interpretation issues and the application of the Court’s summary judgment ruling to similar licenses.

Although additional issues may arise, the Parties have endeavored to identify below the additional key issues of law to be tried and determined upon trial.

1. Whether Oracle is entitled to injunctive relief and the scope of such relief.
2. Whether to enter an order impounding or requiring destruction of all infringing materials pursuant to 17 U.S.C. § 503.
3. Whether Oracle is entitled to restitution under California’s unfair business practices statute and the amount of such restitution.
4. Whether to enter an order finding a constructive trust for Oracle’s benefit.

1 5. Whether Oracle is entitled to an accounting and any relief in connection with
2 Oracle's accounting claim.

3 6. The amount of statutory damages pursuant to 17 U.S.C. § 504 upon a finding of
4 infringement if Oracle elects to recover statutory damages.

5 7. The appropriate calculation of any prejudgment interest.

6 8. Whether Oracle is entitled to an award of attorney's fees and costs and the amount
7 of the attorney's fees and costs.

8 **VI. ORACLE'S SEPARATE STATEMENT OF ISSUES OF FACT AND**
9 **LAW**

10 Oracle contends the following facts are material to its thirteen causes of action. Rimini
11 has not stated whether they will dispute any of them.

12 1. Oracle spends several billions of dollars each year in overall research and
13 development, a significant portion of which is dedicated to the products at issue in this case.

14 2. Oracle's intellectual property development has enabled it to become one of the
15 largest software companies in the world, with over 100,000 employees.

16 3. Defendant Seth Ravin is the founder, president and CEO of Rimini, as well as the
17 former President of TomorrowNow, Inc., a subsidiary of SAP AG ("Tomorrow Now").

18 4. Defendants were aware that each of Rimini's PeopleSoft, J.D. Edwards, and/or
19 Siebel customers was a current or former customer of Oracle and/or its predecessors.

20 5. At all times since the founding of Rimini, through his ownership of Rimini and
21 his role as CEO and President, Ravin has had both the right and the authority to control, and has
22 had a direct financial interest in, the actions of the corporation.

23 6. Ravin has been personally and directly involved in marketing Rimini's services,
24 in Rimini's responses to requests for proposals, and in negotiating Rimini's contracts with
25 customers.

26 7. Ravin also approved Rimini's contracts with its customers, including any
27 changes, prior to their execution.

28 8. Since Rimini's founding, Ravin has policy and operational control over Rimini.

 9. Since Rimini's founding, Ravin has been Rimini's largest shareholder.

1 10. Since Rimini's founding, Ravin has maintained operational control over the
2 company.

3 11. Ravin personally controlled and was an active participant in Rimini's
4 downloading activities.

5 12. Ravin personally logged into Oracle's technical support websites and downloaded
6 thousands of files, many of which were not licensed by Rimini or by the customer on whose
7 behalf Ravin purported to act.

8 13. Prior to founding Rimini, Ravin was the President of TomorrowNow, and helped
9 create TomorrowNow's illegal business model of making and using thousands of copies of
10 Oracle's copyrighted software applications.

11 14. Ravin admitted that: "There's no way to separate [TomorrowNow and Rimini].
12 We look a lot alike in areas because I did both. ... I designed the TomorrowNow service. I
13 evolved it and created a better service with Rimini Street."

14 15. Ravin designed TomorrowNow's support model.

15 16. Ravin designed Rimini's support model.

16 17. TomorrowNow has admitted that, during the time that Ravin was managing
17 TomorrowNow, TomorrowNow violated Oracle's copyrights, committed criminal copyright
18 infringement, and pled guilty to the unauthorized access to a protected computer with intent to
19 defraud.

20 18. Defendants engaged in "massive theft" of Oracle's intellectual property.

21 19. Defendants engaged in theft of Oracle's intellectual property by repeatedly
22 making multiple copies of Oracle's copyrighted Enterprise Software programs to support their
23 software support service clients beginning in 2005.

24 20. Defendants downloaded software and documentation from Oracle websites
25 including Customer Connection, E-Delivery, Siebel SupportWeb, My Oracle Support, and
26 Oracle Technology Network to Rimini's local computer systems.

27 21. Each download of Oracle software and support materials, including bundles,
28 patches, or updates to Oracle software and Oracle documentation is a reproduction of Oracle's

1 copyrighted works.

2 22. Defendants downloaded software and support materials from Oracle websites on
3 multiple occasions.

4 23. Each and every such download by Defendants constituted a reproduction of one
5 or more of Oracle's copyrighted works.

6 24. Defendants on numerous occasions used a specific customer's credentials to
7 download software and support materials from Oracle websites to which that customer was not
8 entitled.

9 25. Defendants on numerous occasions used a specific customer's credentials to
10 download Oracle software and support materials from Oracle websites for the benefit of some
11 other customer.

12 26. Each download by Rimini of Oracle software and support materials constituted a
13 reproduction of one or more of Oracle's copyrighted works.

14 27. Defendants on several occasions downloaded software and support materials from
15 Oracle websites when Defendants had not yet contracted to support any customer on software
16 related to those materials.

17 28. Defendants maintained copies of software and support materials from Oracle
18 websites on individual developers' machines.

19 29. Each and every copy of physical media such as CDs, DVDs and hard drives that
20 contained copies of Oracle's copyrighted works constituted a reproduction of one or more of
21 Oracle's copyrighted works.

22 30. Creating a complete copy of Oracle installation media such as a CD, DVD, or
23 hard drive creates at least one copy of any and all code objects present on that installation media.

24 31. Completely copying installation media from one physical location or device to a
25 second physical location or device creates at least one complete copy of that installation media.

26 32. Defendants have infringed Oracle's exclusive right to reproduce Oracle's
27 copyrighted works by copying physical media that contained Oracle's copyrighted works.

28 33. Defendants had a complete copy of each of Oracle's 100 registered works listed

1 on Exhibit A in their deleted software library folder.

2 34. Defendants breached their duty to preserve relevant evidence when they deleted
3 the software library in January 2010, knowing that Oracle was likely to file a lawsuit against
4 them based on claims that Defendants were impermissively using Oracle's registered copyright
5 software and knowing that the software library contained evidence potentially relevant to
6 Oracle's anticipated lawsuit.

7 35. Defendants infringed Oracle's exclusive right to reproduce the copyrighted
8 PeopleSoft, Siebel, and J.D. Edwards works listed in Exhibit A by creating and copying
9 installations of Oracle software, referred to as "environments," on Defendants computer systems.

10 36. Regardless of the method employed, Defendants copied Oracle's protected
11 expression when building an environment.

12 37. Defendants copied Oracle's copyright protected software when they built
13 development, or non-production, environments for a number of Defendants' customers using
14 Oracle Database.

15 38. Defendants built many of their environments ostensibly associated with one
16 customer using software from a non-customer-specific software library.

17 39. In 2007-2009, at least 90% of the Oracle Software and Support Material stored at
18 \\rsidata01\share\software, \\rsi-clsvr01\client_software\PeopleSoft, and
19 \\rsiclsvr01\internal_software that was used to build local Environments created by Defendants
20 was not located in client-specific folders.

21 40. In 2007-2009, Defendants used the Oracle software and support materials stored
22 in the identified file locations to build support environments for Defendants' customers that were
23 licensed by Oracle with respect to said software and support material.

24 41. Until as late as January 2010, Rimini's general practice was to build PeopleSoft
25 environments using installation media, patches and updates from a non-customer-specific
26 software library.

27 42. On multiple occasions, Defendants cloned an existing environment ostensibly
28 associated with one customer as part of the process of creating an environment ostensibly

1 associated with a second customer.

2 43. Exhibit C lists 321 PeopleSoft environments created on Defendants' local
3 systems.

4 44. Exhibit C also shows the build source for each of the 321 PeopleSoft
5 environments.

6 45. Of the 321 environments listed on Exhibit C, 104 were created by copying an
7 existing environment ostensibly maintained on behalf of one customer in order to use the copy to
8 support a different customer.

9 46. Defendants cannot identify the sources of bundles, patches, upgrades, and other
10 software and support materials other than installation media used in building each of their
11 environments.

12 47. Any environment ostensibly associated with one customer may have been built, at
13 least in part, using software and support materials ostensibly maintained on behalf of another
14 customer (or using materials not associated with any customer).

15 48. On multiple occasions Defendants created environments not associated with any
16 of Defendants' customers.

17 49. Defendants created numerous development environments, which are
18 environments used for development, testing, and packaging updates to PeopleSoft software for
19 multiple customers.

20 50. On multiple occasions, Defendants created environments without keeping track
21 (and, at least sometimes, without knowledge) of the source of the pre-existing environments,
22 environment components, or updates and patches used to create those environments.

23 51. Defendants infringed Oracle's exclusive right to reproduce Oracle's copyrighted
24 works by backing up and restoring environments to or from Rimini's computer systems.

25 52. Each backup and each restore resulted in a reproduction of one or more of
26 Oracle's copyrighted works.

27 53. Creating tape backups of software and support materials, which included weekly
28 and monthly full backups and daily incremental backups of Defendants' computer network,

1 including the environments and stand-alone installations of PeopleTools listed on Exhibits C, D,
2 and E, the copies of installation media on Defendants' local systems, and the installations of and
3 install media for Oracle Database on Defendants' local systems.

4 54. Considering just the monthly backups and just the backups of PeopleSoft
5 environments that Defendants kept indefinitely, by January 1, 2012, Defendants created more
6 than 3,500 permanent copies of any Oracle copyrighted works contained in those environments.

7 55. Defendants' restored backups of substantial portions of PeopleSoft environments,
8 including the PS_HOME folder and the database, on an ongoing basis.

9 56. Defendants infringed Oracle's exclusive rights to reproduce Oracle's copyrighted
10 works through Defendants' regular use of environments located on Defendants' systems.

11 57. Defendants installed Oracle software environments on virtual machine servers.

12 58. Defendants loaded or started Oracle software environments present on these
13 virtual machines for various purposes, including to create updates for PeopleSoft software.

14 59. Loading a computer program into RAM, or loading a virtual machine operating a
15 computer program, creates a partial copy of that program.

16 60. A portion of an environment is loaded into a computer's RAM when that
17 environment is loaded for use.

18 61. Rimini activated virtual machines containing environments (which had been
19 deactivated or not yet activated following a rebooting of the virtual machine servers), resulting in
20 the copying of contents of the environments within the affected virtual machines.

21 62. Defendants regularly ran PeopleTools executable files, which required loading
22 substantial portions of PeopleTools into RAM.

23 63. Each occasion on which more than a *de minimis* portion (let alone a substantial
24 portion) of copyrighted Oracle software was loaded into RAM was an infringing reproduction of
25 one or more Oracle copyrighted works.

26 64. Defendants sometimes made RAM copies of an environment ostensibly
27 associated with one customer when using that environment for the benefit of different customers.

28 65. Defendants infringed Oracle's exclusive right to reproduce Oracle's copyrighted

1 works by copying individual files that embodied more than a *de minimis* portion of an Oracle
2 copyrighted work within Defendants' computer systems.

3 66. Each and every such copy reproduced a substantial amount of protected
4 expression from one or more of Oracle's copyrighted works.

5 67. Defendants copied documentation and software from one of Defendants'
6 computer system to another, such as copying from the Client Archive in Progress folder to the
7 final client archive location.

8 68. Each restored backup infringed Oracle's exclusive right of reproduction in its
9 copyrighted works, including as to registered works associated with the software and
10 documentation copied.

11 69. Defendants regularly opened files that contained Oracle's source code or
12 documentation for review in a software application or text editor.

13 70. Each display of a file on a computer by Defendants resulted in copying of more
14 than a *de minimis* amount of protected expression from the source code or documentation into
15 RAM.

16 71. Each instance where Defendants opened Oracle's software or support materials in
17 a software application or text editor infringed Oracle's exclusive right of reproduction in its
18 copyrighted works, including as to registered works associated with the software and
19 documentation copied.

20 72. Rimini creates derivative works from Oracle's copyrighted works by creating
21 fixes and updates to Oracle's software.

22 73. Each update generated by Defendants was intended to extend or modify the
23 features or functionality of Oracle software.

24 74. Defendants created thousands of fixes and updates for Oracle's software.

25 75. Defendants advised their customers on more than one occasion that Rimini's
26 updates to Oracle software were derivative works that constituted Oracle's intellectual property.

27 76. When developing a PeopleSoft update, Defendants would copy files containing
28 portions of Oracle source code and of Oracle's PeopleSoft-specific database schema between

1 local environments, network shares, developers' machines, and Defendants' FTP server.

2 77. As part of the development process, copies of code were sent via e-mail or instant
3 message between Defendants' employees.

4 78. Defendants performed this copying dozens or hundreds of times per fix, for
5 hundreds or thousands of fixes.

6 79. Defendants developed updates for Oracle software using one customer's
7 environment and distributed those fixes to other customers.

8 80. On multiple occasions, Defendants used a small number of PeopleSoft
9 environments to develop updates (including projects, data changes, and batch object changes)
10 and such updates were ultimately distributed to multiple Rimini customers.

11 81. Certain environments on Defendants' local systems were used multiple times to
12 develop a portion of an update that was provided to customers other than and/or in addition to
13 the customer for which the environment was ostensibly maintained.

14 82. Defendants delivered a total of 2,093 fixes to their PeopleSoft customers from
15 their inception of business until April 27, 2011.

16 83. All of the fixes, when applied to a PeopleSoft environment, would result in a
17 nontrivial change to that environment.

18 84. 59% of the fixes were developed using an environment identified by Defendants'
19 personnel and documents as a development environment.

20 85. 84% of the fixes were delivered to customers other than the customer licensed for
21 the installation media for the environment in which the fix was developed or tested.

22 86. For 69% of the fixes, some portion of the fix was packaged using a development
23 environment into a consolidated file for delivery.

24 87. 68% of the fixes involving batch objects (a type of file used in PeopleSoft) were
25 delivered to customers other than those licensed for copies of the installation media for the
26 environment in which the fix was developed.

27 88. 85% of the fixes involving online objects (a type of file used in PeopleSoft) were
28 delivered to customers other than those in whose environment they were developed.

1 89. 91% of the 57 fixes involving DAT files (a type of file used in PeopleSoft)
2 containing table data were delivered to more customers than the customers associated with the
3 environments used to create those DAT files.

4 90. 96% of the fixes involving batch objects (a type of file used in PeopleSoft)
5 contain more than *de minimis* protectable expression from an Oracle copyrighted work.

6 91. Most of Defendants' fixes for JD Edwards software contained modified Oracle
7 source code or instructions for modification of Oracle's source code that contained modified
8 versions of Oracle's source code.

9 92. Each such fix is an infringing derivative work based upon Oracle software and
10 support materials.

11 93. Creation of each such fix violated Oracle's exclusive derivative work right in
12 Copyrighted Works.

13 94. All of Defendants' fixes for PeopleSoft software and for JD Edwards software,
14 when applied, changed some aspect of the features or functionality of a PeopleSoft or JD
15 Edwards environment.

16 95. Every time a fix was applied to an environment it extended or modified the
17 features or functionality of the Oracle software in the environment.

18 96. Application of any fix generated by Defendants violated Oracle's exclusive
19 derivative work right in its copyrighted works.

20 97. Defendants infringed Oracle's exclusive right to distribute Oracle's copyrighted
21 works by distributing updates to Oracle's enterprise software.

22 98. Updates distributed by Defendants contained protected expression from one or
23 more of Oracle's registered works.

24 99. Defendants distributed thousands of fixes for Oracle's enterprise software to
25 individual customers or to dozens of customers; most of these fixes violated Oracle's exclusive
26 rights in its copyrighted works, including its registered works.

27 100. Defendants infringed Oracle's exclusive right to distribute Oracle's copyrighted
28 works by publicly displaying Oracle's enterprise software on at least one occasion.

1 101. In October 2009, Defendants performed a demonstration for Bausch & Lomb
2 using a copy of H890BAU2, an HRMS 8.9 + PeopleTools 8.48.10 + Oracle Database 10g,
3 release 2 development environment.

4 102. This conduct violated Oracle's exclusive right of reproduction in Oracle's
5 copyrighted works.

6 103. Defendants' wrongful conduct described above was copyright infringement. In
7 addition, or in the alternative, by this conduct, Defendants also induced their customers to breach
8 the terms of their license agreements.

9 104. Defendants downloaded and copied software and support materials from Oracle
10 websites, including Customer Connection, E-Delivery, Siebel SupportWeb, My Oracle Support,
11 and Oracle Technology Network, to Rimini's local computer systems.

12 105. Oracle's computer systems accessed by Defendants to download to their own
13 computers were protected computers within the meaning of 18 U.S.C. § 1030(e)(2).

14 106. Oracle owned all of the computer hardware associated with the operation of the
15 Oracle websites accessed by Defendants, including Customer Connection, E-Delivery, Siebel
16 SupportWeb, My Oracle Support, and Oracle Technology Network.

17 107. Oracle owned or had exclusive rights to all of the materials available for
18 download from the Oracle websites, including updates and support materials that resided on
19 those computers.

20 108. By obtaining login credentials and/or logging into and using Oracle's protected
21 computers with valid login credentials, users agreed to Terms of Use which were displayed,
22 agreed to, and/or available for review.

23 109. The Terms of Use governed who was authorized access Oracle's protected
24 computers and the manner in which they were authorized to access Oracle's protected
25 computers.

26 110. The Terms of Use limited authorization to access and use of Oracle's protected
27 computers.

28 111. The Terms of Use limited authorization to access and use the materials that were

1 made available on Oracle's protected computers.

2 112. Defendants agreed to the Terms of Use when they accessed Oracle's protected
3 computers.

4 113. Defendants knew about Oracle's Terms of Use, but Defendants accessed Oracle's
5 protected computers and download materials from Oracle's protected computers without regard
6 for and in violation of those Terms of Use.

7 114. In violation of the Terms of Use, Defendants used a variety of automated tools,
8 crawlers, and scrapers to access and copy content from Oracle's protected computers.

9 115. Defendants, in competition with Oracle, used information downloaded from
10 Oracle's protected computers to help support customers.

11 116. As early as June 29, 2006, Defendants were putting the "infrastructure in place"
12 to download all of the Siebel materials available from Oracle's protected computers to a non-
13 customer-specific, centralized repository at Rimini referred to as the "full local library."

14 117. Starting as early as June 22, 2006, and continuing through at least January 24,
15 2007, Defendants implemented a "daily crawl" using an unauthorized automated downloading
16 tool, Offline Explorer, to access Oracle's protected computers and capture Siebel support
17 materials, even for customers with expired Oracle credentials.

18 118. The materials from these unauthorized crawls by Defendants, along with a base
19 extract created using the login and password from, among others, Leads Customers Growth and
20 Brandes, were provided to customers as the "Siebel SupportWeb extract."

21 119. From at least October 5, 2006, Defendants set up Offline Explorer to run a weekly
22 crawl of the Oracle E-Delivery website and obtain materials from Oracle's protected computers.

23 120. Defendants continued to use the unauthorized tool Offline Explorer to download
24 Siebel materials from Oracle's protected computers at least through October 4, 2007.

25 121. On or before September 22, 2006, which was before Defendants had contracted
26 with any customers licensed to use PeopleSoft software, Defendants used Offline Explorer to
27 download massive amounts of PeopleSoft materials from Oracle's protected computers through
28 Oracle's Customer Connection website.

1 122. The tools used by Defendants downloaded materials indiscriminately, including
2 PeopleSoft and J.D. Edwards knowledge-base materials.

3 123. Defendants used these Defendant-created unauthorized downloading tools,
4 including Continuing Documentation, Solutions, Updates & Fixes, Client Cases, Patches &
5 Downloads, and Roadmaps & Schedules, to download PeopleSoft materials from Oracle's
6 protected computers through Oracle's websites beginning on or before October 23, 2006 and
7 lasting through at least January 12, 2009.

8 124. Defendants used these automated tools to run mass downloads from Oracle's
9 protected computers on multiple virtual machines simultaneously.

10 125. On June 6, 2007, Defendant Seth Ravin wrote an email stating that Rimini would
11 "continue to utilize automation in its downloading and archiving processes" and that it would
12 primarily run these programs on nights and weekends.

13 126. Defendants also developed customized automated downloading tools for J.D.
14 Edwards software, such as Update Center, Solutions, and Client Cases, and used these to run
15 mass downloads from Oracle's protected computers between at least May 9, 2008 and December
16 9, 2008.

17 127. On or about September 4, 2008, Defendants' employees began development of
18 automated tools to download knowledge-base materials from Oracle's protected computers
19 through Oracle's MetaLink 3 website.

20 128. Lasting until April 19, 2009, Defendants utilized these new tools, referred to as
21 the "Knowledge Base Scan" and the "brute force method" to indiscriminately download
22 materials from Oracle's protected computers.

23 129. Based on the use of these tools, in and after October 2008, and continuing in
24 2009, there occurred unusually heavy download activity on Oracle's password-protected
25 Technical Support website.

26 130. Thousands of these downloads were made to servers associated with the IP
27 addresses [REDACTED]

28 131. Those IP addresses are owned or assigned to Defendants.

1 132. Between November 18, 2008 and November 24, 2008, Defendants accessed
2 Oracle's protected computers using an automated crawler in an attempt to download more than
3 800,000 files from Oracle's websites, resulting in approximately 120,000 successful downloads
4 to the server associated with the IP address [REDACTED].

5 133. On November 21 and 24, 2008, Oracle provided specific notice that Defendants'
6 automated downloading was negatively affecting Oracle's protected computer systems, that
7 corrective action must be taken, and that Oracle may need to block the IP addresses used for
8 automated downloading in order to protect Oracle's systems. Defendants' received these notices
9 on or about November 21 and 24, 2008.

10 134. On December 3, 2008, Oracle provided further notice that Defendants' automated
11 downloading was negatively affecting Oracle's protected computer systems, that Defendants'
12 automated downloading was not authorized by, and was prohibited by, applicable Terms of Use,
13 that Oracle had blocked a number of IP addresses used for automated downloading, and that the
14 improper access must stop. Defendants received this notice on or about December 3, 2008.

15 135. Defendants undertook a series of steps to continue automated downloading
16 despite Oracle's technological measures to prevent it, including using employees' residential
17 internet access for downloading and frequently changing IP addresses in order to avoid detection
18 and blocking.

19 136. In November 2008, Defendant employee Dennis Chiu stated in writing that
20 Defendants' use of such crawlers "creates issues with CPU utilization on Oracle's servers."

21 137. Between December 10, 2008 and December 18, 2008, a user credential ending
22 with "@riministreet.com" accessed Oracle's protected computers and downloaded more than
23 100,000 files to the server associated with IP address 71.5.6.23.

24 138. Even after Defendants claim they stopped use of these automated tools in January
25 2009, Defendants' unauthorized downloading continued.

26 139. Defendants used crawlers to access Oracle's protected computers and download
27 content from Oracle's websites up until at least February 2009.

28 140. Including but not limited to during March 18-23 and April 13-19, 2009, using

1 customer credentials for First Service Networks and Marshall Erdman & Associates, Defendants
2 conducted indiscriminate downloads of Siebel software and support materials from Oracle's
3 protected computers.

4 141. Further, between April 20, 2009 and May 1, 2009, a user credential ending with
5 "@riministreet.com" accessed Oracle's protected computers and downloaded several thousand
6 files to the server associated with the IP address [REDACTED].

7 142. Defendants downloaded from Oracle's protected computers at least 966,511
8 copies of Oracle's copyright support materials.

9 143. Defendants' use of automated download tools to access Oracle's protected
10 computers violated access restrictions in Oracle's Terms of Use.

11 144. These activities represent Defendants' illegal access to Oracle's protected
12 computers, without authorization, in excess of authorization, or in an unauthorized manner.

13 145. Defendants' large-scale, unauthorized downloading damaged Oracle's protected
14 computers.

15 146. Defendants' large-scale, unauthorized downloading caused Oracle's websites to
16 freeze, slow down, or become temporarily non-operational due to the scope of the downloading.

17 147. Defendants' large-scale, unauthorized downloading impeded the functioning of
18 Oracle's business, increased costs to Oracle of maintaining and repairing the protected
19 computers, and disrupted Oracle's ability to provide service to its customers.

20 148. Defendants' unauthorized accesses and access exceeding authorization of
21 Oracle's protected computers triggered a large number of database deadlocks.

22 149. For a period of time in January 2009, access to the entire Oracle Knowledge
23 Management database was disabled for all users as a result of a Defendant crawl.

24 150. In each instance, Defendants downloaded materials from Oracle's protected
25 computers that either they were not licensed to use or the customer they were allegedly
26 downloading for was not licensed to use and/or violated or exceeded applicable terms of use
27 when accessing and/or downloading materials from the Oracle websites.

28 151. In each instance, Defendants either accessed Oracle's computers without

1 authorization or in a manner that exceeded their authorization.

2 152. Oracle America and OIC were in economic relationships with their customers that
3 would have resulted in an economic benefits to Oracle America and OIC.

4 153. Oracle's past and existing licensing and support relationships with customers
5 yield future economic benefit through ongoing sales of both software licenses and support
6 contracts.

7 154. Defendants' customers previously entered into support contracts with Oracle to
8 receive support services.

9 155. While some of Oracle's customers cease to purchase software support, these
10 customers can choose to return to Oracle support at any time.

11 156. Defendants' knew of the existence of Oracle's relationships with its customers.

12 157. Defendants were aware that each of Defendants' potential PeopleSoft, J.D.
13 Edwards, and/or Siebel customers was a current or former customer of Oracle or of Oracle's
14 predecessors.

15 158. Defendants separate Oracle from its licensees by denying Oracle recurring
16 support revenue.

17 159. By denying Oracle of support revenue, Defendants harm Oracle.

18 160. Defendants competed for support contracts for PeopleSoft, J.D. Edwards, or
19 Siebel enterprise software directly with Oracle.

20 161. Defendants' business model is premised on convincing customers to purchase
21 support from Defendants instead of from Oracle.

22 162. Defendants recruited customers to sign support contracts with Defendants instead
23 of with Oracle.

24 163. Defendants engaged in wrongful conduct in order to sign customers at Oracle's
25 expense.

26 164. The software support for PeopleSoft, J.D. Edwards, and Siebel that Defendants
27 offered to their customers was predicated on the following conduct:

28 a. On numerous occasions, Defendants accessed Oracle's systems, including

1 Oracle's password-protected customer support websites, without authorization.

- 2 b. For example, Defendants logged into Oracle's support website using one
3 customer's credentials to access the site on behalf of another customer, or for
4 Defendants' general activities.
- 5 c. Defendants also used expired credentials to access Oracle's support website.
- 6 d. Defendants also used credentials from prospective customers that had not signed,
7 and in some cases never signed, contracts with Defendants.
- 8 e. Defendants also violated Oracle's various Terms of Use through their use of
9 automated tools when downloading software and support materials.
- 10 f. Defendants also violated Oracle's Technology Network Developer License and its
11 E-Delivery terms of use and trial license agreement when accessing and using
12 information from Oracle's websites.
- 13 g. Defendants used information they obtained through this access to Oracle's
14 systems to provide support services to Defendants' customers.
- 15 h. Defendants logged into Oracle's customer support website and used the website
16 to train their personnel, and generally develop a knowledge base that allowed
17 Defendants to advertise their services and recruit customers.
- 18 i. Defendants provided false or misleading information to Oracle, including causing
19 customers to provide misinformation about the locations where customers were
20 requesting software shipped.
- 21 j. Defendants provided below-cost support services as loss leaders.

22 165. Defendants made false statements publicly and to individual current or
23 prospective customers regarding how Defendants provided support services, Defendants'
24 compliance with the terms of their customers' licenses with Oracle, and Defendants' ability
25 and/or authority to offer their services legally or without otherwise breaching any duty to Oracle.

26 166. Defendants did not tell customers that Defendants' services were not compliant
27 with the customers' software licenses.

28 167. Defendants did not tell customers that Defendants cross-used software.

1 168. Defendants did not tell customers that Defendants were not entitled to maintain
2 copies of Oracle's software on Defendants systems.

3 169. Defendants did not tell customer that Defendants did not develop, test, and deliver
4 unique and customer-specific regulatory and tax updates.

5 170. Defendants also provided false information to their existing customers that was
6 then relayed by them in false or misleading references to prospective customers.

7 171. Defendants offered financial incentives to their customers in exchange for
8 favorable references even though Defendants told prospective customers to whom the references
9 were being provided that Defendants did not do so.

10 172. Defendants also made false representations regarding Oracle's lawsuit against
11 SAP AG and TomorrowNow, Inc., Oracle's lawsuit against Defendants, and the similarities
12 and/or alleged differences between Defendants and TomorrowNow.

13 173. Defendants also entered into a support contract with Leads Customer Growth,
14 never provided it with support, but then used their relationship with that customer to acquire
15 other Oracle customers without telling those other customers that Defendants were not providing
16 Leads Customer Growth with support.

17 174. Defendants knew their statements to customers and the market were false, and
18 that their failure to provide customers with accurate information was misleading. At the very
19 least, Defendants did not have a sufficient basis to make these representations.

20 175. Defendants also knew that much of their conduct was unauthorized.

21 176. Defendants' false and misleading statements, and their unauthorized support
22 activities caused customers to sign support contracts with Defendants.

23 177. Because they purchased support services from Defendants, Defendants'
24 customers cancelled their support contracts with Oracle, did not renew support services with
25 Oracle, or chose not to repurchase support services from Oracle

26 178. Defendants' conduct also caused Oracle to lose revenues and profits from
27 Defendants' failure to pay Oracle for their access to and use of Oracle's Database software.

28 179. Defendants' conduct also allowed Defendants to benefit financially from their

1 interference and disruption with Oracle's customer relationships.

2 180. Oracle is also entitled to punitive damages, which Oracle intends to pursue.

3 Oracle also intends to recover its attorneys' fees and other costs.

4 181. Oracle requires individuals who access certain websites to agree to certain terms
5 of use, including Oracle's Metalink 3 Terms of Use, E-Delivery Terms of Use, Oracle
6 Technology Network Terms of Use, Customer Connection Terms of Use, SupportWeb Terms of
7 Use, My Oracle Support Terms of Use, and Oracle.com Terms of Use (collectively, "Terms of
8 Use").

9 182. Rimini accessed various Oracle websites and also downloaded software and
10 support materials from those websites, and as a result agreed to be bound by Oracle's Terms of
11 Use.

12 183. Oracle has performed all conditions, covenants, and promises required on its part
13 to be performed in accordance with Oracle's Terms of Use.

14 184. Defendants used automated download tools to acquire software and support
15 materials from Oracle's support websites, in violation of provisions of the Terms of Use that
16 prohibit the use of automated download tools. Defendants downloaded software and support
17 materials from Oracle's customer support websites using user credentials for customers that were
18 not authorized to obtain some of those software and support materials, in violation of provisions
19 of the Terms of Use.

20 185. Defendants used, reproduced, and copied software and support materials
21 downloaded from Oracle's customer support websites for purposes other than for the support of
22 the customer whose login identification and password were used to access the website, in
23 violation of provisions of the Terms of Use.

24 186. Defendants used, reproduced, and copied software and support materials
25 downloaded from Oracle's customer support websites for purposes other than for the support of
26 the authorized use of Oracle programs for the customer who held a supported license from
27 Oracle without the prior written permission of Oracle, in violation of provisions of the Terms of
28 Use.

1 187. Defendants breached Oracle's E-Delivery Terms of Use and Trial License
2 Agreement by downloading and use of software from Oracle's E-Delivery website.

3 188. Defendants also used Oracle's Database software outside the scope permitted by
4 the Oracle Technology Network Developer License Agreement.

5 189. Defendants' breach of Oracle's Terms of Use caused harm to Oracle.

6 190. Each of Defendants' PeopleSoft, J.D. Edwards, and Siebel customers licensed
7 PeopleSoft, J.D. Edwards, Siebel enterprise software from Oracle or from Oracle's predecessors.

8 191. Defendants knew of the existence of Oracle's relationships with its customers.

9 192. As described above, through Defendants' support activities, Defendants caused
10 PeopleSoft, J.D. Edwards, and Siebel licensees to be in breach of their contracts with Oracle.

11 193. Defendants' conduct, by inducing the breach of their customers' software
12 licenses, harmed Oracle.

13 194. Oracle has performed all conditions, covenants, and promises required on its part
14 to be performed in accordance with the terms and conditions of Oracle's PeopleSoft, J.D.
15 Edwards, and Siebel licenses.

16 195. Defendants committed the above-described conduct to gain a competitive
17 advantage over Oracle in the form of, for example, better publicity, better revenue stream, and
18 the devaluation of Oracle's software brands.

19 196. The above-described conduct harmed Oracle. Among other things, Defendants'
20 conduct damaged Oracle's relationship with its customers, caused Oracle to lose support and
21 license revenue, harmed Oracle's reputation, and caused Oracle to incur expenses to further
22 compete against Rimini.

23 197. Defendants recruited Oracle customers and acquired support fees from those
24 customers based on the above-described conduct.

25 198. Defendants sold their services at a price that was below cost.

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1

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200.

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201. Defendants sold their services below cost with a desire to harm Oracle.

5

202. The sale of Defendants' services at below cost caused harm in the form of lost

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support fees.

7

203. As described above, Defendants misappropriated Oracle's property.

8

204. Defendants used Oracle's property to receive money properly due and owed to

9

Oracle.

10

205. The total amount of money due from Defendants to Oracle is unknown to Oracle

11

and cannot be fully ascertained without an accounting of the income Defendants have obtained

12

through their wrongful and unlawful conduct of obtaining and using Oracle's property.

13

206. Defendants' ability to offer vendor replacement-level support at significant

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discounts relied upon the misuse of Oracle's copyrighted software and support materials.

15

207. Offering vendor replacement-level support at the cost savings offered by

16

Defendants was a significant factor or primary driver in Defendants' customers' decision to

17

cancel their support contracts with Oracle and turn to Defendants for support of their Siebel,

18

PeopleSoft and/or J.D. Edwards applications.

19

208. Defendants' copyright infringement and other wrongful acts contributed

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significantly to customers' decision to cancel their support contracts with Oracle and/or purchase

21

support from Defendants.

22

209. At all times, Oracle had the capacity to service the customers that switched to

23

Defendants.

24

210. Defendants are Oracle's primary competition for after-market support.

25

211. Throughout the entire time period that Defendants provided third party vendor-

26

level support for PeopleSoft, J.D. Edwards and Siebel products, the market for credible non-

27

infringing support providers of these products was primarily a two supplier market consisting of

28

Defendants and Oracle.

1 212. Most of the other third party service providers for the relevant products who
2 operated at any time Defendants did are no longer in business or only offer consulting services
3 that differ from the level of support that Oracle or Defendants provided.

4 213. Defendants' customers did not know of and/or did not seriously consider leaving
5 Oracle support for any other third party support provider other than Defendants when they left
6 for Defendants.

7 214. Self-support was rarely an option considered or used by customers leaving Oracle
8 support.

9 215. Defendants' recruitment of customers away from Oracle caused Oracle to lose
10 support revenue for those customers.

11 216. Had they not signed with Defendants, Defendants' customers would have signed
12 with Oracle in proportion to and consistent with Oracle's historical attrition rates.

13 217. Oracle has suffered lost profit damages beginning on the date that each relevant
14 customer cancelled its Oracle contract, or contracts, related to the products for which it received
15 support services from Defendants.

16 218. Once a customer was dislodged from Oracle by Defendants, it usually resulted in
17 a permanent or long term support revenue loss to Oracle because of financial and political
18 obstacles for that customer to return to Oracle for support.

19 219. Oracle suffered lost profits from these customers in the amount they would have
20 paid Oracle for support had they not cancelled and/or purchased support from Defendants.

21 220. As a result of Defendants' wrongful acts, OIC suffered \$76.0 million in lost
22 profits through December 2012, for customers who signed contracts with Defendants before
23 December 2011, from revenue related to the support of Oracle's PeopleSoft, J.D. Edwards and
24 Siebel software.

25 221. As a result of Defendants' continuing wrongful acts, OIC suffered additional lost
26 profits after December 2012.

27 222. As a result of Defendants' wrongful acts, Oracle America has suffered \$115.2
28 million in lost profits through December 2012, for customers who signed contracts with

1 Defendants before December 2011, from revenue related to the support of Oracle's PeopleSoft,
2 J.D. Edwards and Siebel software.

3 223. As a result of Defendants' continuing wrongful acts, Oracle America suffered
4 additional lost profits after December 2012.

5 224. The copyrighted software and support materials obtained by Defendants and used
6 to build local environments included the installation of Oracle's Database software.

7 225. As it relates to Defendants' misuse of Oracle's copyrighted Oracle Database
8 software Support and Materials, Oracle lost license fees at least as great as those fees it would
9 have charged a licensee for each Defendant "internal business operation" that benefitted from the
10 use of the Oracle Database environments.

11 226. Oracle's publicly listed license fees for Oracle Database are based on the number
12 of processors (or cores on each processor) on the servers where the Oracle Database(s) are
13 installed.

14 227. Prior to December 18, 2009, Oracle's list price for a basic Enterprise Edition
15 license to use Oracle Database for an "internal business operation" was \$40,000 per processor.

16 228. After that date, the price increased to \$47,500 per processor.

17 229. During the damage period, Oracle charged its Oracle Database customers 22% of
18 the Oracle Database license fee per year for support.

19 230. Oracle would have incurred incremental costs of no more than 5% of Oracle
20 Database revenue to achieve the lost Oracle Database license revenue.

21 231. Oracle lost license fees in the amount of \$17.9 million due to Defendant's
22 infringement of Oracle's Database software and Defendants' failure to purchase the required
23 license.

24 232. After Oracle acquired Siebel in January 2006, Oracle implemented a policy to
25 apply a 4% to 5% annual inflationary increase to its Siebel support contracts, instead of using its
26 customary 3% annual inflationary increase.

27 233. In October 2009, competition from Defendants caused Oracle to discontinue its
28 incremental 1% to 2% inflationary adjustment it had applied to Siebel support contracts.

234. Absent Defendants' wrongful conduct, Oracle would have earned an incremental 1% to 2% inflationary adjustment on certain Siebel support contracts.

235. Oracle would have incurred no incremental costs associated with generating these additional revenues.

236. OIC's lost profits for these lost Siebel support revenues through December 2012 is \$2.2 million.

237. Oracle's \$6.1 billion purchase price was an approximate 4 times multiple of Siebel's total revenue based on Siebel's 2005 operating results.

238. In its acquisition of Siebel, Oracle recognized intangible assets of Goodwill at \$2.5 billion, and other intangible assets of \$1.6 billion, including \$808 million of Software Support Agreements and Related Customer Relationships.

239. At the time of Oracle's acquisition of Siebel, approximately 4,000 customers were under support contracts with Siebel.

240. Oracle's "Project Sierra" operating model provides Oracle's forward-looking expectations of the Siebel product line's financial performance at the time of the acquisition of Siebel.

241. Duff & Phelps, which was retained by Oracle to allocate the \$6.1 billion acquisition price for financial reporting purposes, valued the acquired Siebel Software Support Agreements and Related Customer Relationships based on a discounted cash flow approach that considered projections of support revenues and costs through May 31, 2016.

242. At the time of its acquisition of Siebel, Oracle anticipated a 90% or greater renewal rate on its Siebel support contracts.

243. Duff & Phelps projected Oracle's gross margin on Siebel Maintenance Agreements and Related Customer Relationships of 89.5%.

244. Duff & Phelps projected Oracle's sales and marketing costs related to Siebel Maintenance Agreements and Related Customer Relationships of 5%.

245. Duff & Phelps applied a 10% discount rate in its valuation of Siebel's "Existing Technology – License" and "Maintenance Agreements and Related Customer Relationships."

1 246. [REDACTED]

2 [REDACTED]
3 247. Defendants typically marketed their Siebel support service at 50% off of Oracle's
4 price to potential Siebel customers.

5 248. [REDACTED]

6 [REDACTED]
7 249. [REDACTED]

8 250. [REDACTED]

9 [REDACTED]
10 251. [REDACTED]

11 [REDACTED]
12 252. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 253. There are no agreements where Oracle receives license fees or royalties for
16 licensing the Siebel copyrighted materials in suit that would provide an established royalty for a
17 license for Defendants' use in this case.

18 254. There were no license fees paid by Defendants for the use of copyrighted material
19 that is comparable to Defendants' use of Oracle's Siebel copyrighted materials in this case.

20 255. During the term of the hypothetical license, Oracle and Defendants would have
21 considered themselves to be direct competitors for Siebel support services.

22 256. The fair market value of a hypothetical license for Rimini's infringement of
23 Oracle's Siebel software is \$60.0 million.

24 257. Defendants conducted a pilot launch of their PeopleSoft support in April 2006 and
25 acquired their first PeopleSoft customer in September 2006. Defendants conducted a pilot
26 launch of their J.D. Edwards support in September 2006 and acquired their first J.D. Edwards
27 customer in April 2008.

28 258. In December 2004, Oracle acquired PeopleSoft, including the PeopleSoft

1 copyrighted materials in suit related to PeopleSoft Enterprise, J.D. Edwards Enterprise One and
2 J.D. Edwards World, for \$11.1 billion.

3 259. Oracle's \$11.1 billion purchase price was an approximate 4 times multiple of
4 PeopleSoft's total revenue based on PeopleSoft's 2004 operating results.

5 260. In its acquisition of PeopleSoft, Oracle recognized intangible assets of Goodwill
6 at \$6.5 billion, and other intangible assets of \$3.4 billion, including \$2.1 billion of Maintenance
7 Agreements and Customer Relationships.

8 261. At the time of Oracle's acquisition, approximately 9,920 customers were under
9 support contracts with PeopleSoft.

10 262. Oracle's "Project Spice" operating model provides Oracle's forward-looking
11 expectations of the PeopleSoft and J.D. Edwards' product lines' financial performance at the
12 time of the acquisition of PeopleSoft, including expected attrition rates and average annual
13 service revenues per customer.

14 263. Standard & Poor's (S&P), which was retained by Oracle to allocate the \$11.1
15 billion acquisition price for financial reporting purposes, valued the acquired PeopleSoft
16 Maintenance Agreements and Customer Relationships based on a discounted cash flow approach
17 that considered projections of support revenues and costs through May 31, 2015.

18 264. In its valuation of PeopleSoft's Maintenance Agreements and Customer
19 Relationships, S&P projected a 96.5% renewal rate on PeopleSoft and J.D. Edwards support
20 contracts.

21 265. At the time of its acquisition of PeopleSoft, Oracle anticipated average annual
22 service revenues per PeopleSoft/J.D. Edwards customer of \$130,000.

23 266. S&P projected Oracle's gross profit on PeopleSoft Maintenance Agreements and
24 Related Customer Relationships of 85%.

25 267. S&P projected Oracle's sales and marketing costs related to PeopleSoft
26 Maintenance Agreements and Related Customer Relationships of approximately 5%.

27 268. S&P applied a 10% discount rate in its valuation of PeopleSoft's "Existing
28 Technology – License" and "Maintenance Agreements and Related Customer Relationships."

1 269. Defendants believed their market opportunity for support of Oracle products was
2 5% to 20% of Oracle's customer base.

3 270. Defendants typically marketed their PeopleSoft and J.D. Edwards support
4 services at 50% off of Oracle's price to potential PeopleSoft and J.D. Edwards customers.

5 271. [REDACTED]

6 [REDACTED]
7 272. [REDACTED]

8 273. [REDACTED]

9 [REDACTED]
10 274. [REDACTED]

11 [REDACTED]
12 275. [REDACTED]

13 [REDACTED]
14 276. There are no agreements where Oracle receives license fees or royalties for
15 licensing the PeopleSoft and J.D. Edwards copyrighted materials in suit that would provide an
16 established royalty for a license for Defendants' use in this case.

17 277. There were no license fees paid by Defendants for the use of copyrighted material
18 that is comparable to Defendants' use of Oracle's PeopleSoft and J.D. Edwards copyrighted
19 materials in this case.

20 278. During the term of the hypothetical license, Oracle and Defendants would have
21 considered themselves to be direct competitors for PeopleSoft and J.D. Edwards support
22 services.

23 279. The fair market value of a hypothetical license for Defendants' infringement of
24 Oracle's Siebel software is \$150.0 million.

25 280. [REDACTED]

26 [REDACTED]
27 [REDACTED]
28 281. [REDACTED]

1 [REDACTED]
2 282. Defendants have also been unjustly enriched by avoiding licensing and support
3 fees related to their unlicensed use of Oracle's Database software (see above).

4 283. [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 284. [REDACTED]
8 [REDACTED]

9 285. [REDACTED]

10 286. Oracle incurred personnel time and expense related to its investigation of and
11 response to three specific incidents related to Defendants' automated downloading and searching
12 activity.

13 287. Based on Oracle's estimates of the number of hours spent by specific personnel
14 related to these incidents, and the salary costs of those individuals, Oracle incurred at least
15 \$26,689 of personnel expense related to the investigation of and response to Defendants' alleged
16 activity.

17 288. Oracle has incurred significant ongoing legal expenses related to this matter
18 including attorney's fees, costs and other recoverable legal expenses.

19 289. These fees and costs are not yet quantified because they continue to mount.

20 290. As a result of Defendants' illegal conduct, Oracle has also suffered irreparable
21 injury and, unless Defendants are enjoined, will continue to suffer irreparable injury, whereby
22 Oracle has no adequate remedy at law.

23 291. Defendants' conduct, described above, was malicious, oppressive or in reckless
24 disregard of Oracle's rights. For example:

- 25 a. Defendants' continued to provide support services to customers and grow
26 Rimini's support business, even encouraging customers to serve as references for
27 one another, with knowledge that their support model relied on violation of those
28 customers' license agreements with Oracle.

- b. Defendants continued to make and use illegal copies of Oracle software even after the start of this litigation.
- c. Defendants knowingly destroyed or altered evidence important to Oracle's proof of Rimini's illegal conduct.
- d. Defendants knowingly continued their infringing and wrongful conduct, even after that same conduct by SAP TomorrowNow was found to be criminal copyright infringement and the unauthorized access to a protected computer with intent to defraud.

292. Defendants' conduct, described above, was accompanied by ill will, or spite, or undertaken for the purpose of injuring Oracle.

If the parties are not able to agree to the proper interpretation of relevant licenses of website terms of use, Oracle contends these additional questions of law must be resolved at trial.

1. Whether PeopleSoft software license agreements specifying that the license is "solely for Licensee's internal data processing operations," or similar terms authorized Rimini's use of the software for anything other than the licensee's internal data processing operations, including whether those agreements authorized:

- a. copies of software used to develop, package, or test software updates provided to Rimini customers other than the licensee;
- b. copies of software used to research and troubleshoot problems for Rimini customers other than the licensee;
- c. copies of software used to create software environments designed for Rimini customers other than the licensee; and
- d. copies of software used for Rimini's internal purposes and not for any particular licensee.

2. Whether PeopleSoft software license agreements specifying that the license is "solely for Licensee's internal data processing operations at its facilities" or similar terms authorized use of the software for any purpose at Rimini's facilities or any other facilities not owned or leased by the licensee.

1 3. Whether J.D. Edwards software license agreements specifying that the licensed
2 products were “not to be copied by Customer or used by others without the written permission of
3 JDE except for Customer’s production, backup, archival, and disaster recovery purposes, (or
4 similar terms, contained in every relevant J.D. Edwards license) authorized use of the software
5 licensed to a customer for anything other than that customer’s production, backup, archival, and
6 disaster recovery purposes without the written permission of the licensor (J.D. Edwards and then
7 Oracle), including whether the agreements authorized:

- 8 a. copies of software used to develop or test software updates;
9 b. copies of software used to research or troubleshoot problems; and
10 c. copies of software used for Rimini’s internal purposes and not for any specific
11 licensee.

12 4. Whether J.D. Edwards software licensing agreements authorized Rimini to (i)
13 access the software code to carry out development and testing of software updates or (ii) to have
14 a copy of the software on Rimini’s system of than for archival purposes without accessing the
15 software’s source code.

16 5. Whether Siebel software licensing agreements stating that the license “may be
17 exercised solely in connection with Customer’s own internal business operations” (or similar
18 terms contained in every relevant Siebel license) authorized Rimini’s use of the software
19 licensed to a customer for anything other than that customer’s internal business operations,
20 including whether the agreements authorized:

- 21 a. copies of software used to research or troubleshoot problems for Rimini clients
22 other than the licensee; and
23 b. copies of the software used for Rimini’s internal business purposes and not for
24 any specific licensee.

25 6. Whether Siebel software licensing agreements limiting the licensee’s right to copy
26 the software “solely for archive or emergency backup purposes or disaster recovery and related
27 testing” or similar terms contained authorized Rimini to create copies of or install the software
28

1 on its own systems other than for archival, emergency backup, or disaster-recovery testing
2 purposes, including whether the agreements authorized:

- 3 a. Copies of software used to research or troubleshoot problems for Rimini clients
4 other than the licensee; and
- 5 b. Copies of the software used for Rimini's internal business purposes and not for
6 any specific licensee.

7 7. Whether the terms of use for Oracle's MetaLink 3, My Oracle Support, and
8 Oracle's Customer Connection (the "Oracle Support Websites") during the January 1, 2006
9 through December 31, 2011 time period:

- 10 a. were agreed to upon use of the Oracle Support Websites;
- 11 b. prohibited the use, reproduction, and copying of all materials from any Oracle
12 Support Website for any purpose other than for support of the customer whose
13 login identification and password were used to access the Oracle Support
14 Website;
- 15 c. prohibited the use, reproduction, and copying of all materials from any Oracle
16 Support Website for any purpose other than for support of the authorized use of
17 Oracle programs for the customer who held a supported license from Oracle
18 without the prior written permission of Oracle;
- 19 d. on and after February 19, 2007, prohibited access to or use of Oracle Support
20 Websites in any manner that could damage, disable, overburden, impair, or
21 otherwise result in unauthorized access to or interference with, the proper
22 functioning of any Oracle accounts, systems, or networks;
- 23 e. on and after February 19, 2007, prohibited access to Oracle Support Websites
24 using software routines commonly known as robots, spiders, and scrapers, or any
25 other automated means;
- 26 f. until March 1, 2008, prohibited sharing materials from Oracle Support Websites
27 with third parties or access to materials from Oracle Support Websites by third
28

1 parties unless specifically provided for in the customer's agreement with Siebel or
2 Oracle; and

3 g. on and after March 1, 2008, prohibited sharing materials from Oracle Support
4 Websites with third parties or access to materials from Oracle Support Websites
5 by third parties unless specifically provided for in the customer's agreement with
6 Siebel or Oracle except third parties acting as the customer's agents or contractors
7 acting on the customer's behalf solely for the customer's internal business
8 operations.

9 8. Whether the Oracle.com terms of use during the January 1, 2006 through
10 December 31, 2011 time period:

- 11 a. were agreed to upon use of the Oracle.com website;
- 12 b. were incorporated into the terms of use for the Oracle Support Websites;
- 13 c. limited the use of any software and documentation downloaded from the Oracle
14 Support Websites based on the terms of the agreement or agreements applicable
15 to the customer whose login identification and password were used to access the
16 Oracle Support Website;
- 17 d. on and after May 2, 2007, prohibited access to or use of the Oracle Support
18 Websites in any manner that could damage, disable, overburden, impair, or
19 otherwise result in unauthorized access to or interference with, the proper
20 functioning of any Oracle accounts, systems, or networks; and
- 21 e. on and after May 2, 2007, prohibited access to Oracle Support Websites using
22 software routines commonly known as robots, spiders, and scrapers, or any other
23 automated means without Oracle's express written permission.

24 9. Whether the Oracle terms of use for the Oracle Electronic or E-Delivery website
25 during the January 1, 2006 through December 31, 2011 time period required users to agree that
26 they either (i) had already obtained a license from Oracle or an Oracle partner that would govern
27 their use of any software from the website or (ii) would comply with a trial license agreement
28 that, among other things, limited any use to evaluation and testing and not for production.

10. Whether the terms of use for the Siebel SupportWeb website from February 20, 2006 through the migration to Oracle's systems in January 2008:
- a. were agreed to upon use of the Siebel SupportWeb website;
 - b. prohibited the use, reproduction, and copying of all materials from the Siebel SupportWeb website for any purpose other than for support of the customer whose login identification and password were used to access the Siebel SupportWeb website;
 - c. prohibited the use, reproduction, and copying of all materials from any the Siebel SupportWeb website for any purpose other than for support of the authorized use of Oracle programs for the customer who held a supported license from Oracle without the prior written permission of Oracle;
 - d. prohibited sharing materials from the Siebel SupportWeb website with third parties or access to materials from the Siebel SupportWeb website by third parties unless specifically provided for in the customer's agreement with Siebel or Oracle;
 - e. on and after February 19, 2007, prohibited access to or use of the Siebel SupportWeb website in any manner that could damage, disable, overburden, impair, or otherwise result in unauthorized access to or interference with, the proper functioning of any Oracle accounts, systems, or networks; and
 - f. on and after February 19, 2007, prohibited access to the Siebel SupportWeb website using software routines commonly known as robots, spiders, and scrapers, or any other automated means.

VII. DEFENDANTS' SEPARATE STATEMENT OF ISSUES OF FACT AND LAW

Rimini submits that the legal question of whether Oracle's state law claims are preempted by the Copyright Act will be determined at trial. In addition, Rimini submits the following list of material issues of facts:

- 1 1. Licensees of Oracle software are entitled to contract with third party consultants to
2 receive support for their software.
- 3 2. All Rimini clients are licensed to the software for which they have contracted support
4 from Rimini.
- 5 3. Rimini's PeopleSoft customers were authorized under their license agreements with
6 Oracle to make a reasonable number of copies of documentation.
- 7 4. Rimini's PeopleSoft customers authorized Rimini to make copies of PeopleSoft
8 documentation on their behalf.
- 9 5. Rimini's J.D. Edwards customers were authorized under their license agreements with
10 Oracle to provide their contractors and vendors access to their J.D. Edwards software.
- 11 6. Rimini's J.D. Edwards customers were authorized under their license agreements with
12 Oracle to copy J.D. Edwards software and documentation to the extent necessary for the
13 customer's archival needs and to support users of the software.
- 14 7. Rimini's J.D. Edwards customers were authorized under their license agreements with
15 Oracle to obtain consulting services from third parties.
- 16 8. Rimini's J.D. Edwards customers were authorized under their license agreements with
17 Oracle to modify their J.D. Edwards software.
- 18 9. Rimini's J.D. Edwards customers authorized Rimini to make archival copies of J.D.
19 Edwards software on their behalf and to provide other support services.
- 20 10. Rimini's Siebel customers were authorized under their license agreements with Oracle to
21 create and use support copies of Siebel software and documentation.
- 22 11. Rimini's Siebel customers were authorized under their license agreements with Oracle to
23 create and use support copies of Siebel software and documentation.
- 24 12. Rimini's Siebel customers authorized Rimini to make support copies of Siebel on their
25 behalf and to provide other support services.
- 26 13. Rimini has had a consistent company policy of protecting Oracle's intellectual property
27 by enforcing a set of procedures designed to ensure that Rimini clients do not receive the
28 benefit of any Oracle software or other intellectual property to which they are not
entitled.
14. Rimini uses the term "on-boarding" to refer to the process of transitioning a client from
whatever support provider it had been using previously (often Oracle support) onto
Rimini support services.
15. Rimini's downloading, done separately for and on behalf of each client, reflects the often
voluminous set of the materials corresponding to the software the client has licensed from
Oracle.

- 1 16. After receiving express authorization from a new client, a common initial step is for
2 Rimini to take delivery of the client's software and support materials for archival
3 purposes.
- 4 17. Rimini has consistently performed its J.D. Edwards development remotely on its clients'
5 systems.
- 6 18. Rimini did not copy of J.D. Edwards fixes from one remote client environment to
7 another.
- 8 19. Rimini's clients contracted Rimini to support their ERP software because Rimini offered
9 them — and delivered — a better value proposition than Oracle: service of equal or better
10 quality at a significant savings.
- 11 20. Rimini would not have needed a separate instance of the Database software for every
12 client that used it.
- 13 21. Oracle's Database software is designed such that one instance of the software (even an
14 instance running on a single processor) is capable of accessing and updating multiple
15 databases.
- 16 22. Rimini's maintenance of environments on behalf of its J.D. Edwards customers was for
17 archival purposes.
- 18 23. Consistent with typical J.D. Edwards licensing provisions, Rimini was allowed to
19 maintain copies of J.D. Edwards software on its clients behalf because it (i) needed its
20 clients J.D. Edwards software to assist them in exercising its rights under the agreement
21 (e.g., making archival copies); (ii) was instructed not to disclose the information; and
22 (iii) executed a confidentiality or nondisclosure agreement with respect to the software.
- 23 24. Consistent with Siebel licensing provisions, Rimini was allowed to maintain copies of
24 Siebel software on its clients behalf because the Siebel environments maintained by
25 Rimini were used for archival and back-up purposes, as well as for testing.
- 26 25. Rimini's standard agreement provides that the client designates Rimini as an "authorized,
27 designated Oracle support contact" and expressly permits Rimini to "access Oracle
28 Corporation's customer web site" to obtain software and support materials.
- 29 26. The rights to use and install the Oracle software at issue in this case were not restricted
and tied solely to the specific software installation media delivered by Oracle.
- 30 27. Software copyrights are separate and distinct from the physical objects (e. g. installation
media) on which they may be embodied.
- 31 28. The rights granted by Oracle to its customers under the Oracle license agreements are not
limited or restricted to any specific physical embodiment of the software, like Oracle's
provided software installation media.
- 32 29. The rights contained in Oracle's license agreements with its licensees applied equally to
the copies of the copyrighted software maintained on Rimini's systems regardless of

1 whether Rimini used the specific installation media provided by Oracle to make those
2 copies.

3 30. Rimini Street caters to customers who have stable legacy systems and no immediate
4 desire to upgrade

5 31. Rimini Street's support program includes premium services that are not part of standard
6 vendor support, such as a dedicated Primary Support Engineer for each account,
7 guaranteed 30-minute response time, and support for customizations, interoperability, and
8 performance tuning of client's software.

9 32. Other third-party vendors provide certain support and consulting services for PeopleSoft,
10 J.D. Edwards and Siebel software.

11 33. Rimini competes with other third-party vendors that provide support and consulting
12 services for PeopleSoft, J.D. Edwards and Siebel software.

13 34. Rimini Street is capable of servicing its customers remotely.

14 35. Rimini Street provides many support services to its customers that do not infringe
15 Oracle's copyrighted works.

16 36. For many of Rimini Street's customers, Rimini Street did not influence the decision to
17 leave Oracle support.

18 37. Many of Rimini Street's customers considered other third-party support providers besides
19 Rimini Street, as well as self-support.

20 38. For many of Rimini Street's customers, the decision to leave Oracle support was driven
21 by dissatisfaction with the service and/or value provided by Oracle support.

22 39. Price was not the sole reason, or even the most important reason, why certain Rimini
23 customers left Oracle for third-party support.

24 40. According to certain Rimini customers, Rimini Street's support services were better and
25 faster than Oracle's support services.

26 41. Rimini Street is financially capable of operating in a remote-only model with only
27 modest additional labor costs.

28 42. Of Oracle support's cancellations, third-party support competition caused only a small
fraction of the cancellations.

43. Oracle customers are not required to purchase support services from Oracle after the
initial support term that is included with the purchase of the customers' software licenses;
it is at their option.

44. Certain Oracle customers considered self-supporting their licensed software or using
third-party consultants as viable alternatives to Oracle software support.

- 1 45. Some Oracle customers believed that they did not receive value from their money spent
2 on Oracle support services.
- 3 46. Oracle did not substantially vary its pricing based on the differing site restrictions
4 appearing in the PeopleSoft licenses-at-issue.
- 5 47. Rimini believed that its practices with respect to Oracle's intellectual property were
6 authorized by its license agreements and/or the license agreements of its customers.
- 7 48. Rimini Street performs a download of Oracle Software and Support Materials from
8 Oracle's web sites on behalf of each of its clients who: (a) requests and authorizes Rimini
9 Street to download from Oracle on their behalf a unique set of Oracle Software and
10 Support Materials the customer is entitled to use based on their licensed products and
11 Oracle Annual Support product coverage; and (b) represents they are presently an Oracle
12 Annual Support customer whose Oracle Annual Support period has not expired.
- 13 49. Oracle's support websites repeatedly recommends using an "automated means" known as
14 a "download manager" to download files from Oracle's website.
- 15 50. Rimini's automated tools were developed to include filtering features that were designed
16 to limit the search results returned.
- 17 51. The majority of the tools used by Rimini were written in the AutoIT3 scripting language
18 and used a standard Internet browser and a standard download manager.
- 19 52. AutoIT3 uses a combination of simulated user movement (keystrokes, mouse
20 movements, and window/control) in order to automate tasks generally performed by a
21 user.
- 22 53. Rimini's AutoIT3 scripts did not bypass Oracle security, and Rimini's AutoIT3 scripts
23 used a standard download manager.
- 24 54. Oracle expressly allows for the use of such download managers, even going so far as to
25 "highly recommend" their use.
- 26 55. Oracle documentation makes clear that (1) pre- and post- requisites must be applied for
27 the Oracle software to operate properly and (2) that such requisites may be associated
28 with Oracle products for which the customer is not licensed.
56. Oracle advises that these required updates selected by Oracle's Change Assistant do not
always match the customer's licensed products.
57. There is no evidence of a negative effect on Oracle's system as a direct result of Rimini's
activities.
58. Oracle created its own deadlock problems by unnecessarily programming a database
"delete" of queued download requests to require exclusive access.
59. Oracle's deadlock logs reported the deadlock "is not an ORACLE [database] error. It is a
deadlock due to user error in the design of an application or from issuing incorrect ad-hoc
SQL."

60. There was no physical damage to Oracle's servers as a result of Rimini's alleged activities.

61. There was no physical impairment to Oracle's servers as a result of Rimini's alleged activities.

62. There were no reports from customers to Oracle of slowdowns or impairments to Oracle's support websites during the timeframe of Rimini's alleged activities.

63. Mr. Seth Ravin did not personally download material from Oracle's website.

VIII. EXHIBIT LISTS AND DEPOSITION DESIGNATIONS

Appendix A is Oracle's Exhibit List, along with Rimini's preliminary objections to Oracle's exhibits.

Appendix B is Rimini's Exhibit list, along with Oracle's preliminary objections to Rimini's exhibits.

Appendix C is a list of Oracle's deposition designations, along with Rimini's preliminary objections to Oracle's designations.

Appendix D is a list of Rimini's deposition designations, along with Oracle's preliminary objections to Rimini's designations.

The parties agree that the documents included in Appendices A and B, for which no objection is currently listed, can be admitted at trial subject to appropriate foundation being provided.⁴ The parties further agree that they can remove exhibits from their exhibit list throughout the pretrial meet and confer process, and in response to the Court's rulings regarding the scope of trial.

⁴ Both parties made modifications to their exhibit lists on the date of this filing. Rimini added approximately 2,500 exhibits to its Exhibit List. Rimini states that all but three of these were contract documents that also appear on Oracle's exhibit list. Rimini has not previously produced and has yet to provide Oracle with two Rule 1006 summaries it added to its list. Oracle also has not had the time to confirm Rimini's representation regarding its additions, if the additions impact other issues addressed in the pre-trial motion, or whether Oracle needs to add additional documents in response. Oracle removed certain exhibits, reordered a portion of its list, and added "reserved" placeholders to give it the option to further reorder its list. The parties reserve all rights with respect to the each other's changes, they agree that Oracle may later provide Rimini with its objections to Rimini's additions, and the parties continue to confer regarding the exhibit lists.

1 The parties also reserve the right to supplement and amend their objections, including for
 2 documents for which no objection is currently listed, throughout the pretrial meet and confer
 3 process and at trial, in response to motions in limine, *Daubert* motions, Court rulings, and the
 4 context within which the evidence is presented.

5 **IX. WITNESS LISTS**

6 The parties submit the following lists of witnesses that may be called at trial either live or
 7 by deposition other than solely for impeachment or rebuttal purposes:

8 Appendix E -- Oracle's Proposed Witness List;

9 Appendix F -- Rimini's Proposed Witness List.

10 The parties reserve the right to call additional witnesses for purposes of impeachment or
 11 rebuttal at trial. The parties also reserve the right to call any witness, either live or by deposition,
 12 identified on the opposing party's witness list.

13 The parties reserve the right to narrow or amend the witness lists to account for court
 14 rulings, further proceedings, further stipulations, or further meeting and conferring.

15 **X. PROPOSED TRIAL DATES & LENGTH OF TRIAL**

16 **Oracle Statement Regarding the Length of Trial**

17 Oracle expected that the Court's summary judgment rulings would provide sufficient
 18 guidance regarding the conduct at the heart of Oracle's claims that the parties would be able to
 19 stipulate to many otherwise contested facts and license interpretations issues. Oracle believes it
 20 can reduce the trial time needed to prove its claims with an order establishing copyright liability
 21 for the facts Rimini no longer disputes and the license interpretations the court ordered. Such an
 22 order would also simplify the issues to be decided by the jury. However, as explained above,
 23 Rimini refuses to stipulate to virtually all facts regarding its conduct on which the Court ruled or
 24 to the impact of the Court's license ruling.

25 For example, Rimini has stated it does not dispute that it had 321 local PeopleSoft
 26 environments on its systems. *See* Undisputed Fact # 43. Under the Court's first motion for
 27 summary judgment order, these copies are prima facie copyright infringement. Dkt. 474 at
 28 6. Rimini has also indicated it will waive its express license defense for these copies and has no

1 defense remaining. *See* Rimini's Contentions. But Rimini will not stipulate to liability for
2 copyright infringement for the relevant registrations, software copies, and associated
3 customers. Even though Rimini is not disputing (and cannot dispute) that these copies constitute
4 copyright infringement, Rimini claims an express finding of liability for them is "unneeded" or
5 "cumulative." Rimini is wrong. The scope of Rimini's liability is directly relevant to Oracle's
6 damages.

7 With a ruling from the court establishing Rimini's copyright liability for the full scope of
8 its undisputed conduct, and with their agreement regarding the meaning of relevant license and
9 terms of use provisions, Oracle estimates that the trial herein will take a total of 15 days.

10 **Rimini's Statement Regarding the Length of Trial**

11 Like Oracle, Rimini believes that the trial in this case will take approximately 15 trial
12 days. However, Rimini, respectfully requests that the Court set aside at least 5 weeks and no
13 more than 7 weeks for this trial for reasons explained below.
14

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
[REDACTED]

Trial Dates

Despite their best efforts, the parties' calendars do not align for a joint proposal regarding potential trial dates in the near-term.

Based on a three-week trial following a motion procedure to establish the reach of the Court's summary judgment rulings, Oracle proposes the following three trial dates:

April 22-May 13, 2015

June 17-July 13, 2015

January 2016

Regarding the timing of trial, Rimini proposes that trial be conducted in September, October or November of 2015. Rimini's lead counsel and its expert witnesses are all generally available during this three month window. Rimini's lead counsel and its expert witnesses are also generally available after April in 2016.

1 DATED: November 21, 2014

2 BINGHAM McCUTCHEN LLP

SHOOK, HARDY & BACON LLP

3 By: /s/ Geoffrey M. Howard

By: /s/ Peter E. Strand

4 Geoffrey M. Howard (*pro hac vice*)

Peter E. Strand (*pro hac vice*)

5 Three Embarcadero Center

2555 Grand Blvd.

6 San Francisco, CA 94111-4067

Kansas City, MO 64108

7 Telephone: 415.393.2000

Telephone: (816) 559-0401

Facsimile: 415.393.2286

Facsimile: (816) 421-5547

8 geoff.howard@bingham.com

rreckers@shb.com

9 *Attorneys for Plaintiffs*

Attorneys for Defendants

ATTESTATION OF FILER

The signatories to this document are myself and Peter Strand and I have obtained Mr. Strand's concurrence to file this document on his behalf.

DATED: November 21, 2014

BINGHAM McCUTCHEN LLP

By: /s/ Geoffrey M. Howard

Geoffrey M. Howard (*pro hac vice*)

Three Embarcadero Center

San Francisco, CA 94111-4067

Telephone: 415.393.2000

Facsimile: 415.393.2286

geoff.howard@bingham.com

Attorneys for Plaintiffs